Rahbar Yadollah Fathi v Public Prosecutor

COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO B-05(M)-412–09 OF 2017
ABDUL RAHMAN SEBLI, ZABARIAH MOHD AND MOHAMAD ZABIDIN JJCA
13 FEBRUARY 2020

Criminal Procedure — Trial — Excessive questioning of witnesses by trial judge — Accused appealing conviction and sentence alleged that trial judge's elaborate and detailed questioning of witnesses had exceeded limits of judicial intervention, strengthened the prosecution's case and prejudiced his defence — Whether notes of proceedings showed trial judge's 'intervention' did not amount to his taking over of the prosecution — Whether questions posed by trial judge were merely for purpose of clarification as permitted by s 165 of the Evidence Act 1950 — Whether accused was not prejudiced by trial judge's action as he was represented at all times by counsel at trial — Whether evidence showed no break in chain of evidence relating to the handling of the drug exhibits

Police officers on duty at the arrival hall of the Kuala Lumpur International Airport detained the appellant, who had just arrived on a flight from Iraq, when they noticed him behaving suspiciously. They took him to the airport's narcotics office for a body search but found nothing incriminating. However, when the appellant said he needed to use the toilet urgently to defecate he was allowed to do so, but under the watchful eyes of a policeman. When the appellant excreted a capsule wrapped in transparent plastic suspected to contain dangerous drugs, he was taken to hospital where an x-ray showed foreign objects in his stomach. Over the next five days in hospital under detention, the appellant passed out several more similar capsules. In total, he excreted 99 capsules containing a total of 558g of methamphetamine. The appellant was charged with trafficking in the drug. His defence to the charge was called after the trial judge found that he had exclusive mens rea possession of the drug and was presumed to be trafficking under s 37(da)(xvi) of the Dangerous Drugs Act 1952 ('the DDA'). The appellant's defence that he might have swallowed the capsules while he was intoxicated with liquor at a party in Iraq two days before he came to Malaysia was rejected by the trial judge on the ground that self-induced intoxication was not a defence under the Penal Code. The judge also found that the appellant's conduct of not taking any heavy food to avoid having to defecate before coming to Malaysia showed that the appellant in fact knew what he was doing, which was to traffic the methamphetamine in Malaysia. The trial judge found the prosecution had proven its case against the appellant beyond reasonable doubt. He was

accordingly convicted and sentenced to death under the DDA. The appellant's two grounds of appeal against his conviction and sentence were: (a) that the trial judge's elaborate and detailed questioning of the prosecution witnesses beyond the limits of judicial intervention had bolstered the prosecution's case and prejudiced his defence; and (b) there was a break in the chain of evidence regarding the handling of the 99 capsules giving rise to a reasonable doubt as to whether they were indeed excreted by the appellant.

Held, unanimously dismissing the appeal and affirming the conviction and sentence:

(1) Based on principles established by case-law and considering that the trial judge had wide power under s 165 of the Evidence Act 1950 to question witnesses or the parties concerned about any fact in order to discover relevant facts pertaining to the case at hand, the 'intervention' of the trial judge in the instant case by asking questions during the trial did not amount to his taking over the prosecution. The questions posed were merely for clarification which the judge was allowed to do under s 165. The appellant was represented by counsel during trial and any answer given by a witness to a question from the trial judge was open to re-examination by counsel. There was nothing on record to suggest that counsel was denied of the opportunity to put any question to the witnesses. As such, this ground of appeal had no merit (see paras 26 & 28).

(2) The trial judge found that there was no break in the chain of evidence concerning the drug exhibits. From the totality of the evidence, the absence of any photograph showing the process of marking of the capsules and the fact that the markings were not recorded in the search list did not affect the chain and identity of the 99 capsules. The evidence showed that each and every sentry officer (six of them) guarding the appellant at the hospital had confirmed that the capsules were marked at the hospital and the investigating officer also confirmed that all the capsules received by him bore the markings made by the respective sentry officer. This was supported by the handing-over list which had recorded the markings made on the capsules. The appellant's allegation that the signatures in the search lists were not his was a mere allegation without proof. The evidence showed that the sentry officers had witnessed the appellant signing the search lists. As the evidence of the sentry officers supported each other, the trial judge was right in accepting their evidence. The non-production of the plastic bags that the sentry officers used to carry the capsules was, as found by the trial judge, immaterial because the sentry officers had explained that the purpose of placing the capsules into the hospital's plastic bags was to safely store the capsules before they were handed over to the investigating officer (see paras 30–33).

(3) Since the trial judge had carefully evaluated the evidence and had not committed any error of law or of fact, there was no basis for the appellate court to disturb the trial judge's finding of the appellant's guilt. The conviction was safe and amply supported by the evidence (see para 34).

[Bahasa Malaysia summary

Pegawai polis yang sedang bertugas di dewan ketibaan Kuala Lumpur International Airport telah menahan perayu, yang baru sahaja tiba melalui penerbangan dari Iraq, apabila menyedari perlakuannya yang mencurigakan. Mereka telah membawanya ke pejabat narkotik lapangan terbang untuk melakukan carian pada badan namun tidak menjumpai apa-apa yang boleh dikaitkan dengan jenayah. Namun, apabila perayu memohon untuk menggunakan tandas dengan segera untuk membuang air besar, dia telah dibenarkan untuk berbuat demikian namun diharuskan di bawah pengawasan seorang anggota polis. Apabila perayu mengeluarkan kapsul yang dibalut di dalam plastik yang telus yang disyaki dadah berbahaya, dia telah dibawa ke hospital di mana x-ray telah menunjukkan terdapat bahan asing di dalam perutnya. Selama lima hari di hospital di bawah tahanan, perayu telah mengeluarkan beberapa kapsul yang sama. Secara keseluruhan, perayu mengeluarkan 99 kapsul mengandungi sejumlah 558g methamphetamine. Perayu telah didakwa untuk pengedaran dadah. Perayu telah dipanggil untuk membela diri apabila hakim perbicaraan mendapati perayu mempunyai mens rea yang eklusif untuk dadah tersebut dan telah dianggap untuk mengedar di bawah s 37(da)(xvi) Akta Dadah Berbahaya 1952 ('ADB'). Dalam pembelaan perayu, alasan yang dia mungkin telah menelan kapsul-kapsul tersebut ketika dia sedang mabuk dengan minuman keras ketika di sebuah parti di Iraq dua hari sebelum datang ke Malaysia telah ditolak oleh hakim perbicaraan atas alasan mabuk yang disebabkan oleh diri sendiri bukanlah alasan pembelaan di bawah Kanun Keseksaan. Hakim juga mendapati perlakuan perayu untuk tidak memakan makanan berat untuk mengelakkan membuang air besar sebelum sampai ke Malaysia menunjukkan perayu tahu apa yang dia lakukan, iaitu untuk mengedarkan methamphetamine di Malaysia. Hakim perbicaraan telah mendapati pendakwaan telah membuktikan kes terhadap perayu melebihi keraguan yang munasabah. Dia telah kemudiaannya disabitkan dan dijatuhkan hukum mati di bawah ADB. Dua alasan rayuan perayu terhadap sabitan dan hukumannya adalah: (a) penerangan dan soal siasat secara terperinci hakim perbicaraan saksi pendakwaan adalah melebihi had campur tangan kehakiman dan telah membantu kes pendakwaan dan menjejaskan pembelaannya; dan (b) rantaian bukti mengenai pengendalian 99 kapsul telah terputus yang menimbulkan keraguan munasabah sama ada kapsul tersebut telah dikeluarkan oleh perayu.

Diputuskan, sebulat suara menolak rayuan itu dan mengesahkan sabitan dan hukuman:

(1) Berdasarkan prinsip-prinsip yang dibentuk oleh undang-undang dan mempertimbangkan bahawa hakim perbicaraan mempunyai kuasa yang luas di bawah s 165 Akta Keterangan 1950 untuk menyoal saksi atau pihak-pihak yang berkaitan mengenai apa-apa fakta untuk mengetahui fakta-fakta yang berkaitan dengan kes yang sedang dibicarakan, 'campur tangan' hakim perbicaraan dalam kes ini dengan mengemukakan soalan semasa perbicaraan tidak sama dengan pengambilan alih daripada pihak pendakwaan. Persoalan yang ditimbulkan hanya untuk penjelasan yang dibenarkan kepada hakim di bawah s 165. Perayu diwakili peguam semasa perbicaraan dan apa-apa jawapan yang diberikan oleh saksi kepada soalan dari hakim perbicaraan itu terbuka untuk pemeriksaan semula oleh peguam. Tiada apa-apa dalam rekod untuk mencadangkan bahawa peguam itu dinafikan peluang untuk membuat sebarang pertanyaan kepada saksi-saksi tersebut. Oleh itu, alasan rayuan ini tidak mempunyai merit (lihat perenggan 26 & 28).

(2) Hakim bicara mendapati bahawa rantaian keterangan tidak terputus mengenai ekshibit dadah. Dari keseluruhan bukti, ketiadaan gambar yang menunjukkan proses penandaan kapsul dan bahawa penandaan tidak direkodkan dalam senarai carian tidak menjejaskan rantaian dan identiti 99 kapsul tersebut. Bukti menunjukkan bahawa setiap pegawai yang menjaga (terdapat enam orang) yang menjaga perayu di hospital telah mengesahkan bahawa kapsul telah ditandakan di hospital dan pegawai penyiasat juga mengesahkan bahawa semua kapsul yang diterima olehnya mempunyai tanda-tanda yang dibuat oleh masing-masing pegawai yang menjaga. Ini telah disokong melalui senarai penyerahan yang telah direkodkan tanda yang dibuat pada kapsul. Tuduhan perayu bahawa tandatangan dalam senarai carian bukanlah tandatangannya hanyalah merupakan tuduhan semata-mata tanpa bukti. Bukti menunjukkan bahawa pegawai yang menjaga telah menyaksikan perayu menandatangani senarai carian. Oleh disebabkan bukti pegawai menjaga saling menyokong antara satu sama lain, hakim perbicaraan adalah betul dalam menerima bukti mereka. Ketiadaan beg plastic dalam bahan bukti yang yang digunakan oleh pegawai penjaga untuk membawa kapsul itu, seperti dinyatakan oleh hakim perbicaraan, tidak penting kerana pegawai yang menjaga telah menjelaskan bahawa tujuan meletakkan kapsul ke dalam beg plastik hospital adalah menyimpan kapsul dengan selamat sebelum diserahkan kepada pegawai penyiasat (lihat perenggan 30–33).

(3) Oleh disebabkan hakim perbicaraan telah menilai bukti tersebut dengan mendalam dan tidak melakukan kesalahan dari segi undang-undang atau fakta, tidak ada dasar bagi mahkamah rayuan untuk mengganggu keputusan hakim perbicaraan atas kesalahan perayu. Sabitan tersebut itu adalah selamat dan disokong oleh bukti yang mencukupi (lihat perenggan 34).]

Cases referred to

Abuchi Ngwoke v Public Prosecutor [2016] 2 MLJ 623, CA (refd)
Elonita Abayon Chua (W/Filipina) lwn Pendakwa Raya [2018] 5 MLJ 482, CA (refd)
Mohammed Ali bin Johari v Public Prosecutor [2008] SGCA 40; [2008] 4 SLR 1058, CA (refd)

Legislation referred to

Dangerous Drugs Act 1950 ss 37(da)(xvi), 39B(1)(a), First Schedule
Evidence Act 1950 s 165
Penal Code s 85(2)

Appeal from: Criminal Trial No 45A-11–01 of 2015 (High Court, Shah Alam)

V Jayamurugan (Jayamurugan Vadivelu & Partners) for the appellant.
Gan Chee Keong (Deputy Public Prosecutor, Attorney Generals Chambers) for the respondent.

Mohamad Zabidin JCA (delivering judgment of the court):

INTRODUCTION

[1] The appellant was charged for trafficking in dangerous drugs. The amended charge reads:

> Bahawa kamu pada 18.6.2014 jam lebih kurang 6.00 petang hingga 24.6.2014 jam lebih kurang 4.30 petang, bertempat di tandas pejabat Bahagian Siasatan Jenayah Narkotik KLIA, Aras 3, MTB KLIA, Sepang sehingga bertempat di Hospital Kajang, dalam negeri Selangor, telah mengedar dadah berbahaya seberat 588.0 gram Methamphetamine, dan oleh demikian kamu telah melakukan suatu kesalahan di bawah seksyen 39B(1)(a) Akta Dadah Berbahaya 1952 dan boleh dihukum di bawah seksyen 39B(2) Akta yang sama.

THE PROSECUTION'S CASE

[2] On 18 June 2014 at around 3.30pm, the police team led by Sjn Noor Reshiam ('PW3') while on duty at the arrival hall, Main Terminal, Kuala Lumpur International Airport, saw the appellant behaving suspiciously while walking through the custom check point. PW3 detained the appellant and brought him to the KLIA's Narcotics Office Examination Room. Upon physical examination on the appellant PW4 did not discover anything incriminating.

[3] At around 6pm the appellant complained that he needed to pass motion.

In the toilet at the KLIA's Narcotic Office, witnessed by PW3, the appellant excreted one capsule wrapped in transparent plastic (P10) suspected to contain drugs.

[4] At 18 June 2014, at about 9pm Insp Amrin bin Mohd Arif ('PW13') the investigating officer ('IO') of the case, received from PW3 the appellant and the following exhibits which were recovered from the appellant:

(a) the appellant's passport (P28);

(b) two boarding pass with appellant's name printed on them (P29–P30);

(c) one black hand phone brand Nokia together with simcard and battery (P27);

(d) one piece of USD 100 (P73);

(e) one piece of RM100 (P74); and

(f) one capsule suspected to contain drug (P10).

[5] PW13 kept the exhibits under lock and key at his office at Bahagian Siasatan Jenayah Narkotik Daerah Sepang ('BSJND'). The appellant was then taken to Serdang Hospital on 18 June 2014 at about 11.35pm. An x-ray was done by Dr Tan Chuan Jin ('PW12') on the appellant and the image showed there were foreign objects in the appellant's stomach. The appellant was thus detained in room 28, ward 6C of Serdang Hospital.

[6] While under detention at Serdang Hospital, the appellant excreted through his anus a total of 25 capsules suspected to contain dangerous drugs on various occasions as follows:

(a) on 19 June 2014 at about 3.15pm, witnessed by Insp Awang Idris Awang Hassan ('PW6') and other police personnel, the appellant excreted 18 capsules (P12(1–18)). These 18 capsules were handed over to PW13 by PW6 at around 5.30pm on the same day. They were kept under lock and key after markings were made; and

(b) at about 10pm 19 June 2014, witnessed by Corp Mahadir Osman ('PW7'), the appellant excreted seven capsules suspected to contain drugs (P14(1–7)). These seven capsules and search list (P33) were subsequently handed over to PW13 on 20 June 2014 at about 1.10pm. After the necessary markings were made, the exhibits were kept under lock and key by PW13.

[7] The appellant was discharged from Serdang Hospital on 20 June 2014. However, on the same day the appellant was brought to the emergency ward at Banting Hospital where another x-ray was conducted on the appellant. The

x-ray showed there were still foreign objects in the appellant's stomach. While at the emergency ward at Banting Hospital, at about 5.30pm (20 June 2014) witnessed by L/Corp Mohamad Azahari Ramli ('PW4'), the appellant excreted through his anus seven capsules (P16(1–7)) suspected to contain dangerous drug. Later on 21 June 2014 at about 1.45pm PW4 handed over the seven capsules to PW13.

[8] On the 21 June 2014 at about 4.30pm the appellant was brought to Tengku Ampuan Rahimah Hospital ('TARH') in Klang where x-ray showed there were foreign objects in the appellant's stomach. While at TARH, the appellant excreted a total of 60 capsules on various occasions as follows:

(a) at about 8.45pm 21 June 2014, witnessed by L/Corp Mohamad Hisyam Hassan ('PW5'), the appellant excreted through his anus 14 capsules (P18(1–14)) suspected to contain dangerous drugs. These 14 capsules were subsequently handed over to PW13 by PW5 on 22 June 2014 at about 3.15pm. After markings were made, the exhibits were then kept under lock and key by SP13;

(b) at about 4am the appellant, witnessed by PW6, excreted through his anus 19 capsules suspected to contain dangerous drugs (P20(1–19)). These 19 capsules subsequently, on 22 June 2014 at about 11.05am, were handed over to PW13 by PW6. After markings were made, the exhibits were then kept under lock and key by PW13;

(c) at about 8.15am on 22 June 2014, witnessed by Sjn Rusli Johar (PW9) the appellant excreted through his anus nine capsules suspected to contain dangerous drugs (P22(1–9)). PW9 handed over these nine capsules to PW13 on 22 June 2014 at 6.26pm. After markings were made, PW13 kept the capsules under lock and key;

(d) at about 11.10am on 22 June 2014, witnessed by PW9, the appellant excreted 12 capsules suspected to contain dangerous drugs (P24(1–12)). PW9 handed over these 12 capsules to PW13 on 22 June 2014 at about 6.35pm. After markings were made, PW13 kept the capsules under lock and key; and

(e) at about 2.25pm on 22 June 2014, witnessed by PW9, the appellant excreted six capsules suspected to contain dangerous drugs (P26(1–6)). PW9 handed over these six capsules to PW13 on 22 June 2014 at about 6.40pm. After markings were made, PW13 kept the capsules under lock and key.

[9] On 23 June 2014 at about 4.35pm the appellant was warded at Kajang Hospital. While at the Kajang Hospital, witnessed by Cpl Rashid Basir ('PW8'), the appellant excreted through his anus six capsules suspected to contain dangerous drugs (P71(1–6)). These six capsules were then handed over

by PW8 to PW13 on 25 June 2014 at 1am. After marking were made, PW13 kept the capsules under lock and key.

[10] The 99 capsules were later sent by PW13 to the chemist, Puan Suhana binti Ismail ('PW2') for analysis. PW2 confirmed that the 99 capsules contained methamphetamine with a total weight of 558g, which forms the subject matter of the charge. PW2 also confirmed that methamphetamine is listed under the First Schedule of the Dangerous Drugs Act 1950 ('the Act').

FINDINGS OF TRIAL JUDGE

[11] At the end of the prosecution's case, the learned trial judge found that the appellant had exclusive possession of the impugned drugs. The learned trial judge drew an inference that the appellant had mens rea possession of the drugs found inside his person.

[12] As to the element of trafficking, the learned trial judge invoked the statutory presumption under s 37(da)(xvi) of the Act based on the weight of the drugs involved. The appellant was thus presumed to have trafficked the impugned drugs unless he proved otherwise.

[13] After being satisfied that all the elements of the charge had been proven against the appellant, the learned trial judge found that the prosecution had established a prima facie case. Thus, the learned trial judge ordered the appellant to enter his defence.

DEFENCE

[14] The appellant elected to give evidence under oath. The appellant was the sole witness for the defence. Essentially, the defence of the appellant was that prior to coming to Malaysia he was working in Arbi, Iraq for 15 days. While in Arbi, his employer asked him (the appellant) to come to Malaysia to help in preparing Iranian dishes.

[15] Two days before his departure to Malaysia (on 16 June 2014) he attended a party where liquor was served. At the party he drank liquor and became slightly intoxicated. He admitted swallowing a capsule he believed to be 'ubat kuat'. After that, he became so intoxicated that he did not know what had happened. He cannot remember how many capsules he had swallowed while at the party.

A FINDINGS OF TRIAL JUDGE AT CLOSE OF DEFENCE

[16] At the conclusion of the trial, the learned trial judge found that the appellant's conduct of not taking any heavy food after swallowing the impugned capsules to avoid having to pass motion before coming to Malaysia showed the appellant in fact knew he had swallowed 99 capsules containing dangerous drugs and the drugs were to be brought into Malaysia for trafficking. Even if the appellant was indeed intoxicated when swallowing the impugned capsules, it was a self-induced intoxication which is not a defence under s 85(2) of the Penal Code.

[17] The learned trial judge found the appellant failed to raise reasonable doubt on the prosecution's case. The learned trial judge also found that the appellant had failed to rebut the presumption of trafficking under s 37(da)(xvi) of the Act on the balance of probabilities. The learned trial judge was satisfied that the prosecution had proved beyond reasonable doubt the case of trafficking against the appellant as per the charge. The appellant was thus convicted and sentenced to death. Hence, this appeal.

E THE APPEAL

[18] Although there are 11 main grounds of appeal in the petition of appeal, however learned counsel for the appellant posited only the following two issues during the hearing of this appeal:

(a) that the trial judge had exceeded the limits of judicial intervention by putting question to witnesses; and

(b) that there were doubts as to the identity of the drug exhibits.

[19] Based on the two grounds, learned counsel submitted that the conviction was not safe. Learned counsel urged this court to allow the appellant's appeal and accordingly acquit the appellant.

First Issue: The trial judge exceeded the limits of judicial intervention

[20] Regarding the first issue, learned counsel referred to various pages of the notes of proceeding where the learned trial judge had asked questions to various witnesses. They were as follows:

Mah	:	Bagi saksi sambung cerita dia. Dah tekan syak dia ada barang disyaki apa kamu buat? Sambung di situ.
J	:	Setelah pemeriksaan badan dibuat, tiada jumpa apa-apa salah dan saya mengesyaki.

Mah : Kamu tak jumpa barang salah tapi kamu syaki dia ada telan. Apa berlaku lepas itu?

J : Kemudian saya telah maklumkan pegawai atasan saya, ASP Muhidin untuk tindakan elanjutnya. Pada jam lebih kurang 6.00 petang, perayu ada mengadu sakit perut dan untuk membuang air besar.

Mah : Dia minta buang air besar?

J : Ya, Yang Arif.

Mah : Tadi yang kamu periksa ini pukul berapa? Kamu tahan dia pukul berapa? 3.30?

J : 3.30 Yang Arif.

Mah : 3.30 tahan, bawa pergi balai, periksa badan dia semua pukul berapa?

J : Pukul 4.00 Yang Arif.

Mah : Pukul 4.00 sampai pukul 6.00 ini perayu dekat mana?

J : Di pejabat Bahagian Siasatan Jenayah Narkotik.

Mah : Tahan dia dekat sana lah?

J : Ya, yang Arif. Di pejabat.

Mah : Pukul 6.00 dia mengadu sakit perut dia nak buang air besar?

J : Ya, Yang Arif.

(Rekod Rayuan, Jilid 2(1), m/s 42–43)

Mah : Ketulan yang dia bagi itu, dia ada warna ke tak ada warna?

J : Warna, plastik lutsinar sahaja. Kemudian, saya telah membawa perayu dan ketulan plastik lutsinar itu masuk semula ke dalam Pejabat Bahagian Siasatan Jenayah Narkotik, KLIA. Saya kemudiannya, telah membuat pemeriksaan ke atas plastik lutsinar itu.

Mah : Ketulan plastik lutsinar?

J : Ya, Yang Arif dan membuat sedikit torehan ke atas ketulan plastik lutsinar itu dan saya dapati terdapat serbuk yang disyaki dadah.

(Rekod Rayuan, Jilid 2(1), m/s 45)

Mah : Kamu jumpa ketulan. Kamu tak sebut kapsul. Itu yang saya tanya daripada mula awal tadi ketulan. Sekarang kamu nak cam kapsul bukan ketulan. Dia tak boleh cam ketulan, dia boleh cam kapsul. Ketulan dalam tandas itu dia tak boleh cam atau kamu nak tunjuk kapsul benda lain?

TPR : Kapsul, Yang Arif. Saya rujuk kepada IDP63.

Mah : Saya nak tanya kapsul ini jumpa dekat mana? Ini benda lain yang Perayu buang air besar itu ketulan.

J : Ketulan berupa kapsul, Yang Arif.

Mah : Tak ada. Kamu tak cakap ketulan berupa kapsul. Kamu tak sebut macam itu. Kamu kata ketulan plastik lutsinar, betul?

TPR : Ketulan yang berbalut plastik lutsinar kamu cakap.

Mah : Ketulan yang berbalut plastik lutsinar yang kamu jumpai tapi kamu tulis dalam senarai bongkar, kamu tak jumpa ketulan berbalut plastik lutsinar. Kamu jumpa satu kapsul disyaki dadah Kamu serah kepada Inspektor satu kapsul disyaki mengandungi dadah. Jadi ketulan yang kamu dapat yang perayu keluarkan itu pergi mana saya pun tak tahu. DPP kena tanya. Clarify pada saksi ini.

S : Dalam borang kata kapsul, tadi sarjan kata ketulan berbalut plastik. Adakah benda yang sama?

J : la adalah benda yang sama

Mah : Benda yang sama dengan apa? Satu kapsul?

J : Benda yang sama dengan ketulan yang saya jumpai.

Mah : Di mana kamu jumpa?

J : Semasa Perayu membuang air besar.

(Rekod Rayuan, Jilid 2(1), m/s 53–54)

ii. SP4

(Rekod Rayuan, Jilid 2(1), m/s 45)

Mah : Lagi? Ada beza lagi?

S : Bentuk dia sama?

J : Bentuk sama.

Mah : Cuba kamu pegang sekarang. Angkat. Nipis ke tebal masa kamu dapat daripada perayu?

J : Boleh picit, Yang Arif?

Mah : Soalannya sekarang, sama ke seketul kamu dapat dekat saya dengan sekarang?

J : Yang ada di hadapan sekarang kosong. Semasa saya rampas mampat.

(Rekod Rayuan, Jilid 2(1), m/s 88)

iii. SP5

Mah : Soalannya panggil macam mana?

J : Koperal Suhaimi ketika itu berada berdekatan dengan zon kecemasan.

Mah : Tahu, tapi kamu panggil dia macam mana? Telefon ke? Kamu lambai ke?

J : Saya telah lambai kepada Koperal Suhaimi mengatakan perayu telah membuat pengeluaran.

(Rekod Rayuan, Jilid 2(2), m/s 113)

Mah : Leper macam kertas masa kamu dapat itu?

J : Tak, kembung.

Mah : Tak samalah. Sekarang ini bentuk dia bulat-bulat ke sekeping macam kertas?

J : Bulat-bulat macam ini, Yang Arif.

Mah : Bulat-bulat juga?

J : Ya.

Mah : Angkat saya nak tengok.
J : Begini Yang Arif. Semasa barang tersebut berbentuk begini.
Mah : Berbentuk macam mana?
J : Bulat.
Mah : Bulat ketulan. Sekarang pun bentuk ketulan juga?
J : Macam ini Yang Arif.
Mah : Sekarang ini bentuk ketulan juga lah?
J : Ketulan macam ini.
S : Sekarang dalamnya ada isi tak?
J : Tidak ada.
Mah : Masa kamu dapat itu?
J : Ada isi.
Mah : Sekarang?
J : Tidak ada.
Mah : Masa kamu dapat itu?
J : Ada isi.
Mah : Sekarang?
J : Tidak ada.
Mah : Beza dia yang itulah?
J : Itu saja beza dia, Yang Arif.

(Rekod Rayuan, Jilid 2(2), m/s 125)

Mah : Kamu kata sebelum serah menyerah, kamu dah timbang.
J : Benar, Yang Arif.
Mah : Kamu dah tahu anggaran berat?
J : Saya memang tak tulis
Mah : Kenapa?
J : Kerana saya beranggapan saya sudah nyatakan di dalam report sahaja.
Mah : Jangan rujuk pada report. Sekarang kita rujuk dalam borang serah menyerah Kenapa tak tulis dalam itu?
J : Kerana saya fikir tak perlu tulis.

(Rekod Rayuan, Jilid 2(2), m/s 139–140)

iv. SP6

Mah : Tadi kamu masukkan dalam beg galas, kamu bawa keluar balik?
J : Ya, Yang Arif.
Mah : Atau kamu tanda dulu baru masuk dalam beg galas? Yang mana satu?
J : Tidak, Yang Arif. Saya simpan dalam beg galas.
Mah : Keluarkan daripada beg galas dan tanda kapsul-kapsul tersebut di atas katil?
J : Di atas meja makan untuk pesakit.

(Rekod Rayuan, Jilid 2(2), m/s 145)

Mah : Cuba kamu bilang berapa kapsul dalam gambar nombor 3?
J : 18, Yang Arif.
Mah : Setelah selesai tugas ini, ada lagi arahan diterima daripada IO kes Inspektor Amrin untuk perayu ini?
J : Ada.
Mah : Buat apa?
J : Penugasan di Klang pada tarikh yang berbeza.
Mah : Klang di mana?
: Klang di Hospital Tengku Ampuan Rahimah.
Mah : Pada tarikh yang lain?
J : Pada tarikh yang lain.
Mah : Persoalannya sekarang kita kata tadi, barang yang depan kita ini lain. Yang dalam gambar boleh cam. Jadi pada masa itu, rupa barang kes itu macam mana?
J : Yang sekarang kosong, Yang Arif.
Mah : Yang dulu macam mana?
J : Dulu di dalamnya penuh bahan-bahan disyaki dadah.
Mah : Macam mana?
J : Keras, Yang Arif.
Mah : Macam dalam gambar nombor 3 ke?
J : Ya, Yang Arif.

(Rekod Rayuan, Jilid 2(2), m/s 152)

Mah : Dalam itu tak ada tandas?
J : Tak ada. Hanya bilik mandi.
Mah : Koperal Suhaimi datang apa kamu suruh dia buat atau apa yang dia buat?
J : Saya arahkan Koperal Suhaimi ambil gambar.
Mah : Ambil gambar apa?
J : Barang kes.
Mah : Barang kes apa? Mana ada barang kes? Yang ada najis. Ambil gambar apa spesifiknya?
J : Mulanya saya suruh perayu cuci dahulu.
Mah : Jadi sebelum suruh ambil gambar suruh cuci dulu?
J : Sebelum itu saya suruh perayu cuci kapsul balutan disyaki dadah.

(Rekod Rayuan, Jilid 2(3), m/s 200)

Hakim : Maksud peguam, selepas kamu tanda, ada ambil gambar atau tidak?
SP6 : Selepas ambil gambar.
Hakim : Bukan selepas ambil gambar, selepas ambil gambar, tanda lain. Selepas tanda, ambil gambar yang ada tanda.
SP6 : Itu tiada, Yang Arif.
Hakim : Kamu kena faham.

SP6 : Saya tak faham soalan, Yang Arif.
Hakim : Kalau tak faham, jangan jawab. Tiada kesalahan jika kita tak faham.
(Rekod Rayuan, Jilid 2(3), m/s 211)

v. SP7

Mah : Kapsul saja keluar? Najis tak keluar?
J : Najis tak ada cuma kapsul saja
Mah : Keluar kapsul saja?
J : Kapsul saja
Mah : Najis tak keluar?
J : Najis tak ada dia cuma kapsul saja.
Mah : Yang bersama kapsul itu tak ada najis?
J : Ada sikit.
(Rekod Rayuan, Jilid 2(2), m/s 157)
Mah : Dulu masa kamu ambil simpan dalam plastik itu dia keras ke tak keras?
J : Dia keras.
Mah : Sekarang cuba tengok keras ke tak?
J : Sekarang ini tak keras.
Mah : Itu yang DPP Tanya ada beza ke tak ada beza. Isi dekat dalam ada tak sekarang ini?
J : Tak ada.
Mah : Sekarang ini yang kamu tengok depan kamu ini ada beza tak dengan yang hari itu?
J : Ada beza, Yang Arif.
Mah : Apa bezanya?
J : Bezanya, tak keras dan lembut, lembik
(Rekod Rayuan, Jilid 2(2), m/s 165)
Mah : Kamu ambil sendiri ke kamu suruh perayu ambil beri pada kamu?
J : Saya ambil depan perayu.
Mah : Kamu ambil sendiri?
J : Ambil sendiri
Mah : Bukan dia terima daripada perayu. Kamu ambil sendiri kemudian baru kamu tanda? Ke kamu ambil sendiri masuk dalam plastik dulu lepas itu keluar daripada plastik tanda M1 hingga M7. Yang mana satu? Cuba ingat balik.
J : Ambil dan tanda dahulu.
Mah : Ambil daripada sinki, kamu tanda lepas itu masuk dalam plastik?
J : Ya.
Mah : Lepas masuk plastik lutsinar kamu buat apa?
J : Simpan dalam beg saya.
Mah : Lepas masuk dalam beg kamu buat apa?

J : Lepas itu simpan dalam simpanan saya.
Mah : Lepas itu kamu buat apa dengan 7 ketulitu?
J : Saya bawa balik ke IPD
Mah : Jadi kamu tak tanda lah? Terus bawa balik?
J : Tanda dulu.
Mah : Itulah saya tanya kamu buat apa lepas kamu masuk dalam beg kamu? Satu-satu. Kita mula balik sekali lagi Mula daripada 7 ketulan itu atas sinki. Cerita.
J : Saya ambil masuk dalam plastik itu. Simpan. Lepas itu panggil jurugambar. Susun balik itu ambil gambar. Sebelum ambil gambar saya dan tanda M1 hingga M7.
Mah : Ceritakan satu persatu yang kamu buat dengan 7 ketulan kapsul itu yang ada di atas sinki. Mula daripada situ.
J : Saya buat tandaan dulu M1 hingga M7. Selepas itu saya ambil barang kes masuk dalam plastik lutsinar.

(Rekod Rayuan, Jilid 2(2), m/s 173–174)

Mah : Tempat kamu tanda itu di mana?
J : Tanda dekat dalam itu juga.
Mah : Dalam apa?
J : Dalam bilik air.
Mah : Dalam bilik air ke dalam bilik wad.
J : Dalam bilik wad.
Mah : Lepas itu kamu masuk dalam plastik?
J : Ya, masuk dalam plastik.
Mah : Lepas itu panggil jurugambar ambil gambar?
J : Belum lagi. Last sekali baru masuk dalam plastik. Dah tanda bagi jurugambar ambil gambar.
Mah : Selepas tanda bagi jurugambar ambil gambar. Dia ambil gambar itu ketulan itu di mana? Dalam plastik ke di luar plastik?
J : Di luar plastik yang di susun itu.
Mah : Jadi jurugambar ambil gambar di dalam plastik itu susun tanda M1 hingga M7 mesti nampak la kan dalam gambar? Sebab kamu dah tanda, betul?
J : Betul, Yang Arif.
Mah : Tengok gambar ini, tanda kamu tak ada pun M1 hingga M7. Itu yang kita tanya sekarang ini. Satu per satu. Jangan langkah-langkah pusing cerita Kalau kamu kata selepas kamu tanda, kamu panggil jurugambar ambil gambar. Kenapa dalam gambar ini tanda M1 sampai M7 tak ada? Itu yang DPP nak perbetul balik ini. Tanya balik semula.
S : Nombor 17, kamu tengok yang kamu cam tadi.
Mah : Tengok gambar 17, ada tak tanda M1 sampai M7 sampai M7 pada kapsul itu? Ada ke tak ada?
J : Tak ada. Bermakna selepas itu

Mah	:	Maknanya apa? Gambar ini diambil bila?
J	:	Selepas itu baru saya tanda.
Mah	:	Gambar ini diambil bila? Sebelum ke selepas kamu tanda?
J	:	Gambar ini sebelum saya tanda.
Mah	:	Tadi dia cakap dia tanda dulu. Lepas itu panggil jurugambar ambil gambar.
J	:	Saya lupa, Yang Arif. Saya minta maaf.

(Rekod Rayuan, Jilid 2(2), m/s 175–176)

vi. SP10

Hakim	:	Balik perenggan 10. Turut bertugas ketika itu Herisman, Syed Mohd Taufik, Roland Kana, tapi tiada kata saya boleh camkan anggota polis tersebut. Nak beritahu perkara tersebut atau tak?
SP10	:	Saya boleh camkan, Yang Arif.
Hakim	:	Pinda dan tambah.

(Rekod Rayuan, Jilid 2(3), m/s 265)

vii. SP13

Hakim	:	Plastik itu untuk kemudahan bawa atau ekshibit yang penting?
SP13	:	Ekshibit yang penting, Yang Arif.
Hakim	:	Plastik itu?
SP13	:	la untuk memudahkan pengadu dan menyimpan sekali bahan bukti itu dan serahkan kepada saya.
Hakim	:	Dan lebih selamat, bukan?
SP13	:	Ya, Yang Arif. Lebih selamat.

(Rekod Rayuan, Jilid 2(4), m/s 308)

[21] Based on the above extract from the notes of proceeding, learned counsel submitted that it is clear that the question posted by the learned trial judge were meant to support the prosecution's case which was prejudicial to the appellant. Learned counsel submitted that the trial judge had fallen into error in descending into the arena of dispute thereby allowing his judgment of the facts to be clouded by the results of his questions. Learned counsel then referred us to the decision of this court in *Abuchi Ngwoke v Public Prosecutor* [2016] 2 MLJ 623 where the court set aside the conviction under s 39B(1)(a) after finding that the trial judge had fallen into error in descending into the arena of dispute thereby allowing his judgment of the facts to be clouded by the results of his questions. The court in *Abuchi Ngwoke* case also found that the learned trial judge had exceeded the desirable limits of judicial intervention in the examination and cross-examination of the appellant and the witness. Relying on *Abuchi Ngwoke* case, learned counsel urged us to acquit the appellant.

[22] The learned DPP on the other hand submitted that looking at the

questions asked by the learned trial judge, the learned trial judge was merely seeking clarification. He did not descent into the arena of dispute. Regarding the *Abuchi Ngwoke* case that being relied by the appellant, the learned DPP informed the court that the appeal court's decision had been overturned by the Federal Court.

Second issue: The Identity of the drug exhibits

[23] On the issue of identity of the drugs, learned counsel's complaint was in relation to the chain of evidence regarding the drug exhibits. Learned counsel contended that there were breaks in the chain of evidence because:

(a) although the six sentry officers testified that the capsules were marked while they were at the hospitals, these facts were not recorded in the search list and no photographs were taken;

(b) there is no clear evidence as to how the capsules were brought to the BSJND. The police witnesses said the capsules were brought in plastic bag provided by the hospitals but the said plastic were not tendered as exhibits during trial; and

(c) the appellant's signatures on the search list exhs P32–P40 are different from the one that appeared on P31 and on his passport.

Thus, according to learned counsel, there is doubt as to whether the 99 capsules were excreted by the appellant.

OUR DELIBERATION AND DECISION

[24] Regarding the first issue and that is the learned trial judge was alleged to have exceeded the limits of judicial intervention when His Lordship post questions to various witnesses, the counsel for the appellant relied on the appeal court's decision in *Abuchi Ngwoke* to persuade us to set aside the appellant's conviction. However, it is pertinence to note that the Federal Court which sat on 19 April 2017 (Coram, Chief Judge YAA Md Raus Sharif, Federal Court Judges YA Hasan Lah, YA Zainun Ali, YA Balia Yusof and YA Prasad Sandosham) had allowed the DPP's appeal and set aside the decision of the appeal court. The Federal Court ordered the conviction and sentence recorded by the High Court to be reinstated. We were informed that there was no written judgment by the Federal Court.

[25] On the other hand, the appeal court in *Elonita Abayon Chua (W/Filipina) lwn Pendakwa Raya* [2018] 5 MLJ 482, when dismissing the appellant's appeal which was based on, among others, the issue of the trial judge's 'intervention', did take into consideration the fact that the Federal Court had set aside the order made by the appeal court in *Abuchi Ngwoke*, and

went on to say, inter alia:

(1) Given that a criminal trial in Malaysia is an adversarial process between the prosecution and the defence and not an investigation by the judge, the examination in chief and cross-examination is mainly the responsibility and duty of the deputy public prosecutor and the defence counsel. A judge must be cautious and must always maintain impartiality as an independent and impartial referee. A judge cannot descend down the arena (see paras 29–30).

(2) The trial judge played a rather active' and 'dynamic' role in controlling the trial. The interrogation of the judge did not mean that he had taken over the role of the prosecutor and prosecuting from the bench or assisting the prosecution to prove its case against the appellant. Most of the 'interference' by the judge was to seek clarification from the witnesses and to ensure the exhibits were regularly adduced. Some of the questions posed by the judges were beneficial to the defence. The judge's decision to convict the appellant on the charge brought against her was supported by solid evidence and the interrogation of the trial judge did not prejudice the appellant to the significant extent (see paras 35 & 42).

[26] The court also quoted *Sarkar, Law of Evidence* (Vol 2) at p 2885 which explained the wide power conferred by s 165 of the Evidence Act to the trial judge to ask questions. It reads:

> Section 165 of the Evidence Act confers vast and unrestricted powers on the trial Court to put 'any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact 'relevant or irrelevant' in order to discover relevant facts. The said section was framed by lavishly studding it with the word 'any' which could only have been inspired by the legislative intent to confer unbridled power on the trial Court to use the power whenever he deems it necessary to elicit truth. Even if any such question crossed into irrelevancy the same would not transgress beyond the contours of powers of the Court. This is clear from the words 'relevant or irrelevant' in Section 165. Neither of the parties has any right to raise objection to any such question. The powers of the presiding judge of the trial court under s 165 are unbridled and the Court can put any question to any witness at any stage so that evidence is not obscene but is clear on the relevant point. (*Popathal Jethabbai Shah v State of Maharastra* 2007 CrLJ (NOC) 605; 2007 (4) AIR 67 (Bom); *Ramachandran v State of Kerala* 2009, CRLJ 168 (170) (Ker)).

And at p 2887:

> Reticence may be good in many circumstances, but a judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be about or combat between two rival sides with the judge performing the role only of a spectator or even an umpire to pronounce finally who won the race. A judge is expected to actively participate in the trial, elicits necessary,

materials from witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing, which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a judge felt that a witness has committed an error or a slip it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial judge to remain active and alert so that errors can be minimized. (*State of Rajasthan v Ani A* 1997 SC 1023 1997 CRLJ 1529, 1530, 1531. See also *Assistant Commissioner and Land Acquisition Officer v Ramin* 1996 (6) Kar LJ 417 (Kant)).

[27] In *Mohammed Ali bin Johari v Public Prosecutor* [2008] SGCA 40; [2008] 4 SLR 1058, the court held:

> [175] It is appropriate, in our view, to summarise the applicable principles that can be drawn from the various authorities and views considered above, as follows (bearing in mind, however, that, in the final analysis, each case must necessarily turn on its precise factual matrix (see also above at)):
>
> (a) The system the courts are governed by under the common law is an adversarial (as opposed to an inquisitorial) one and, accordingly, the examination and cross-examination of witnesses are primarily the responsibility of counsel.
>
> (b) It follows that the judge must be careful not to descend (and/or be perceived as having descended) into the arena, thereby clouding his or her vision and compromising his or her impartiality as well as impeding the fair conduct of the trial by counsel and unsettling the witness concerned.
>
> (c) However, the judge is not obliged to remain silent, and can ask witnesses or counsel questions if (inter alia):
>
> (i) it is necessary to clarify a point or issue that has been overlooked or has been left obscure, or to raise an important issue that has been overlooked by counsel; this is particularly important in criminal cases where the point or issue relates to the right of the accused to fully present his or her defence in relation to the charges concerned;
>
> (ii) it enables him or her to follow the points made by counsel;
>
> (iii) it is necessary to exclude irrelevancies and/or discourage repetition and/or prevent undue evasion and/or obduracy by the witness concerned (or even by counsel);
>
> (iv) it serves to assist counsel and their clients to be cognisant of what is troubling the judge, provided it is clear that the judge is keeping an open mind and has not prejudged the outcome of the particular issue or issues (and, a fortiori, the result of the case itself).
>
> The judge, preferably, should not engage in sustained questioning until counsel has

completed his questioning of the witness on the issues concerned. Further, any intervention by the judge during the cross-examination of a witness should generally be minimal. In particular, any intervention by the judge should not convey an impression that the judge is predisposed towards a particular outcome the matter concerned (and of some examples of interventions which are unacceptable which were referred to in *Valley* (see [138]).

[28] Coming back to this case, bearing in mind the wide power vested on the trial judge by s 165 of the Evidence Act, and the principle as stated in *Mohammed Ali bin Johari v Public Prosecutor*, we are of the considered view that the 'intervention' by the learned trial judge by asking questions during the trial does not amount to His Lordship taking over the prosecution. The questions posed were merely for clarification which the trial judge was allowed to do under s 165 of the Evidence Act. The appellant was represented by counsel during trial. Any answer given by witness to the question by the trial judge could be re-examined by the counsel. There is nothing on record to suggest that the counsel was denied the opportunity to put any question to the witness. As such we find the first issue raised by learned counsel has no merit.

[29] Regarding the second issue, and that is pertaining to the identity of the exhibits, it is the appellant case that although the six sentry officers testified that the capsules were marked while they were at the hospitals, these facts were not recorded in the search list and no photographs were taken and there is no clear evidence as to how the capsules were brought to the BSJND. The police witnesses said the capsules were brought in plastic bags provided by the hospitals but the said plastics were not tendered as exhibits during trial. The appellant's signatures on the search list exhs P32–P40 are different from the one that appeared on P31 and on his passport. Therefore, according to learned counsel, the appellant's signature in the search lists (exhs P32–P40) was likely to have been forged. As such, there is break in the chain of evidence regarding the handling of the 99 capsules which give raise to a reasonable doubt as to whether the 99 capsules were indeed excreted by the appellant.

[30] We had the opportunity to scrutinise the learned trial judge's ground of judgment and we find the learned trial judge had given due consideration on the issues raised by the appellant before making a finding that there was no break in the chain of evidence. His Lordship wrote in his ground at pp 27–30 of Vol 1 appeal record:

Isu Kedua: Pengendalian dan Penandaan Kapsul-Kapsul Terlibat

47. Peguam bela bagi pihak Tertuduh membangkitkan perkara tiada keterangan dari pihak Hospital sama ada beg plastik ada dibekalkan atau sebaliknya kerana tanpa penjelasan daripada Hospital tersebut bermakna tiada beg plastik dikemukakan yang menunjukkan kapsul-kapsul yang dikemukakan di Mahkamah bukanlah yang dirampas dari pihak Hospital yang berkenaan.

47.1 Pada hemat Mahkamah ini, beg plastik hospital adalah tidak material kepada kes pendakwaan kerana ia bukanlah hal subjek pertuduhan terhadap Tertuduh di dalam kes ini dan yang penting adalah saksi-saksi anggota sentri telah memberikan keterangan mengenai tujuan mereka meletakkan kapsul-kapsul ke dalam beg plastik hospital adalah untuk tujuan penyimpanan barang kes dengan selamat sebelum diserahkan kepada SP13. Penggunaan beg plastik tidak kira sumber dari mana tetapi bersih dan telah tidak mencemarkan kandungan kapsul-kapsul tersebut yang berbalut dengan plastik lutsinar masing-masing setelah dicuci najis Tertuduh.

48. Peguam bela berhujah bahawa saksi-saksi pendakwaan telah mengakui bahawa kesemua 99 kapsul yang dirampas di hospital semasa dikeluarkan melalui dubur Tertuduh itu tidak dirakam gambar dan penjelasan yang diberikan adalah kerana tiada arahan daripada Pegawai Penyiasat kes.

48.1 Mahkamah ini bersetuju dengan hujahan Pendakwaan bahawa tiada terjejasnya kes pendakwaan walaupun gambar kapsul gagal dirakamkan semasa proses pengeluaran kapsul bersama najis oleh Tertuduh di Hospital. Ini kerana proses pengeluaran kapsul-kapsul tersebut telah disaksikan oleh anggota sentri bertugas. Diperhatikan saksi-saksi anggota polis di sini bukanlah saksi berkepentingan tetapi hanya menjalankan kewajipannya secara berkredibel, dengan ini tidak ada sebab untuk Mahkamah ini tidak mempercayai keterangan mereka (*Yusri Pialmi v PP* [2010] 6 CLJ 878);

48.2 Mengenai isu yang dibangkitkan oleh pembelaan berkenaan station diary yang dicatatkan oleh saksi-saksi sentri di hospital gagal dikemukakan sebagai keterangan untuk menjelaskan penandaan kapsul-kapsul terlibat dibuat di Hospital-hospital terlibat, pada hemat Mahkamah ini, bukanlah material dan tidak akan menjejaskan kes pendakwaan kerana adalah mencukupi dengan adanya keterangan yang diberikan oleh anggota sentri tersebut (SP4, SP5, SP6, SP7, SP8 dan SP9) yang telah dipanggil semasa perbicaraan berjalan;

48.3 Selain itu, Peguam bela juga mempertikaikan tandatangan Tertuduh atas borang bongkar (P32–P40) adalah berbeza secara nyata dari segi bentuk dan ciri-cirinya dilihat dengan mata kasar dan menunjukkan kemungkinan tandatangan Tertuduh dipalsukan oleh pihak lain. Mahkamah ini berpendapat bahawa dakwaan yang ditimbulkan ini hanyalah tohmahan kosong tanpa keterangan sokongan yang lain untuk menyangkal atau mempertikaikan keterangan saksi pendakwaan sebagai anggota polis yang menyaksikan Tertuduh menurunkan tandatangan atas borang bongkar tersebut. Mahkamah ini menerima keterangan daripada saksi polis melainkan pihak pembelaan dapat membangkitkan keterangan lain yang dapat menunjukkan sebaliknya, kerana mendapati keterangan yang diberikan oleh saksi-saksi sentri ini telah menyokong antara satu sama lain dalam kronologi kejadian setelah meneliti fakta dan keadaan kes ini berdasarkan penilaian maksimum.

[31] From the totality of the evidence on record, we are constrain to agree with the learned trial judge that the absence of any photograph showing the process of marking the capsules and the markings were not recorded in the search list did not affect the chain and identity of the 99 capsules. From the evidence, each and every sentry officers (SP4, SP5, SP6, SP7, SP8 and SP9) had

confirmed that the capsules were marked at the hospital and the investigating officer (SP13) had also confirmed that all the capsules received bearing the markings made by the respective sentries. This is supported by the handing over list which had recorded the markings made on the capsules, (exhs P41–50).

[32] Regarding the appellant's signatures on the search lists in exhs P32–P40 which are different from the one that appeared on P31 and on his passport, we with respect, agree with the learned trial judge that appellant's allegation that the signatures in the search lists (exhs P32–P40) was likely to have been forged was merely an allegation without proof. From the evidence, the sentry officers had witnessed the appellant signed the search lists (P32–P40), therefore, we find the learned trial judge was right in accepting the evidence of the sentry officers as their evidence support each other.

[33] On the issue of non-production of the plastic bags used by the sentry officers to carry the capsules, again we with respect, agree with the learned trial judge's finding that it is immaterial to the prosecution case as it was not the subject of the charge. Most importantly, the sentry officers had explained that the purpose of placing the capsules into the hospital plastic bags was intended to safely store the capsules before being handed to investigating officer PW13.

CONCLUSION

[34] For the above said reasons, we find both issues posited by the appellant are without merit. To the contrary, we find the ground of judgment shows that in finding the appellant guilty of the offence charged, the learned trial judge had carefully evaluated the evidence. There was no misdirection of law, nor was there any mishandling of the facts by the learned trial judge. In the circumstances there is no basis for us to disturb the finding of guilt by the learned trial judge. The conviction is safe and amply supported by evidence on record. Accordingly, we dismissed the appeal and affirmed the conviction and sentence.

Appeal unanimously dismissed; conviction and sentence affirmed.

Reported by Ashok Kumar